

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN CLIFFORD GARDNER :2:CV-03816

(PLAINTIFF) :

vs. :

TODD BUSKIRK :

(Defendant) :

**DEFENDANT, TODD BUSKIRK'S WAIVER OF REPLY TO PLAINTIFF'S
COMPLAINT**

Defendant, Todd Buskirk, Warden, Northampton County Prison, by and through his counsel, David P. Karamessinis, Esquire of the law firm of Devlin and Devine and in accordance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C., §1997(e), as amended by §803(d) of the Prison Litigation Reform Act of 1995, hereby waives his right to reply to plaintiff's Complaint in this action, which is brought pursuant to 42 U.S.C. §1983. Pursuant to 42 U.S.C. §1997(e)(g), this waiver does not constitute an admission of the allegations contained in the Complaint. Furthermore, defendant, Buskirk asserts all available defenses to the Complaint, including, but not limited to the following:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state claims or causes of action upon which relief can be granted against answering defendant.

SECOND AFFIRMATIVE DEFENSE

At no time material hereto did answering defendant deprive plaintiff of his federally protected rights and answering defendant's actions do not rise to the level of a violation of the Constitution or laws of the United States.

THIRD AFFIRMATIVE DEFENSE

At no time material hereto did answering defendant ever show deliberate indifference towards any legitimate and/or serious medical needs of the plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all times material hereto, plaintiff was granted and afforded all rights and privileges available to prisoners at the Northampton County Prison in relation to medical treatment.

FIFTH AFFIRMATIVE DEFENSE

At all times material hereto, plaintiff was granted reasonable and proper medical care and treatment in accordance with state and federal laws and the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

At no time material hereto did answering defendant ever allow or administer unnecessary or wanton infliction of pain upon plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint may be barred and/or limited by plaintiff's failure to exhaust administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

At no time material hereto, were the Constitutional or civil rights of plaintiff violated by answering defendant in any manner whatsoever.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim or cause of action for violation of plaintiff's Eighth Amendment rights to the Constitution.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, or some of them, are barred and/or limited by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Any injuries and/or damages suffered by plaintiff, which are specifically denied, were caused by other persons, entities or events over which answering defendant had no control, including plaintiff himself.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to allege any cognizable claims for any punitive damages against answering defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to allege any claim or cause of action for any unconstitutional policy, practice, or custom against answering defendants, Todd Buskirk, upon which relief can be granted.

FOURTEENTH AFFIRMATIVE DEFENSE

Answering defendant pleads as an affirmative defense all limitations on causes of action, including any and all limitations on damages, imposed by the Prison Litigation Reform Act of 1995 as amended, U.S.C., 1997(e)(a).

WHEREFORE, answering defendant, Todd Buskirk respectfully requests that this Honorable Court dismiss plaintiff's Complaint with prejudice and enter judgment in his favor along with the allowable costs of this action.

DEVLIN AND DEVINE

BY: _____
David P. Karamessinis, Esquire
Attorney for Defendant, Warden Todd Buskirk

Suite 200, 100 West Elm Street
Conshohocken, PA 19428
ID#: 50836

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of the enclosed Defendant, Todd Buskirk's Answer to Plaintiff's Complaint was sent to plaintiff, John Clifford Gardner (pro se) by United States first-class mail, postage pre-paid.

John Clifford Gardner
ASH-2w
1600 Hanover Avenue
Allentown, PA 18109

DEVLIN AND DEVINE

By: _____
David P. Karamessinis, Esquire
Attorney for Defendant, Warden Todd Buskirk
Suite 200, 100 West Elm Street
Conshohocken, PA 19428
610-397-4635

Date: _____